

# GUNTA LAW OFFICES, S.C.

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November 22, 2021

Honorable Nancy Joseph  
United States District Court, Eastern District of Wisconsin  
517 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

RE: 20-CV-1660 Discovery Update

Dear Judge Joseph:

Defendants write to request an informal discovery conference with the Court, or an order providing the relief described below. Defendants have been unable to resolve the disputes described in this letter through good faith meet-and-confer discussions with Plaintiffs.

The parties have engaged in two meet and confer conferences regarding discovery. During the first meet and confer on November 11, 2021, the parties discussed several issues but focused on reaching an agreement regarding several email searches that had been requested and objected to. As a result of those discussions, parameters for ten email searches were composed. The search parameters were run to determine the number of responsive emails for each search. Those results were as follows:

#### **SEARCH NO. 1**

- a. Search Terms: “TPR” & “People’s Revolution”
- b. Time Frame: 10/14/20-12/13/2020
- c. Email addresses: Martin Keck, Joseph Roy, Farina, Luke Vetter, Shane Wrucke, Barry Weber, Dominick Ratkowski
- d. **Number of responsive Emails: Approximately 150**

#### **SEARCH NO. 2**

- a. Search Term: “Alvin Cole”
- b. Time Frame: 5/25/20-10/13/20
- c. Email addresses: Martin Keck, Joseph Roy, Farina, Luke Vetter, Shane Wrucke, Barry Weber, Dominick Ratkowski
- d. **Number of responsive Emails: Approximately 350**

### SEARCH NO. 3

- a. Search Term: "BLM"
- b. Time Frame: 5/25/20-6/24/21
- c. Email addresses: Martin Keck, Joseph Roy, Farina, Luke Vetter, Shane Wrucke, Barry Weber, Dominick Ratkowski
- d. **Number of responsive Emails: Approximately 250**

### SEARCH NO. 4

- a. Search Term: "George Floyd" & "Jacob Blake"
- b. Time Frame: 8/23/20-10/13/20
- c. Email addresses: Martin Keck, Joseph Roy, Farina, Luke Vetter, Shane Wrucke, Barry Weber, Dominick Ratkowski
- d. **Number of responsive Emails: Approximately 75**

### SEARCH NO. 5

- a. Search Term: "Kimberly Motley" & "Deja Vishny"
- a. Time Frame: 6/1/20-11/1/20
- b. Email addresses: Martin Keck, Joseph Roy, Farina, Luke Vetter, Shane Wrucke, Barry Weber, Dominick Ratkowski
- d. **Number of responsive Emails: Approximately 130**

### SEARCH NO. 6

- a. Search Terms: "Kathryn Knowlton", "Tracy Cole", "Taleavia Cole", "John Larry", "Khalil Coleman", "Jacqueline Bogenberger", & "Gauge Grosskreutz"
- b. Time Frame: 5/25/20-11/11/21
- c. Email addresses: Martin Keck, Joseph Roy, Farina, Luke Vetter, Shane Wrucke, Barry Weber, Dominick Ratkowski
- d. **Number of responsive Emails: Approximately 600**

### SEARCH NO. 7 \* similar to search (ID 13764), re-run with the following parameters

- a. Search Terms: "curfew", "emergency declaration", "emergency order", "state of emergency", "proclamation of emergency", "TPR", "The People's Revolution"
- b. Time Frame: 5/25/20-10/13/20
- c. Email addresses: City Wide
- d. **Number of responsive Emails: Approximately 6,100**

### SEARCH NO 8

- a. All emails
- b. Time Frame: 5/25/20-12/13/20
- c. Email address: [mcleeacovid@googlegroups.com](mailto:mcleeacovid@googlegroups.com)
- d. **Number of responsive Emails: Approximately 369**

### SEARCH NO. 9

- a. Search Terms: Tahudah Cole, Tristiana Walls, Andrew Aaron, Kamila Ahmed, Robert Agnew, Isiah Baldwin, Lavita Booker, Rebecca Burrell, Raine Cich, Steven Conklin, Lauryn Cross, Rachel Dulay, Anne Delessio- Parson, Erik Fanning, Jessica Fenner, Jill Ferguson, Breon Foster, Joanna Geisler, Christine Groppi, Joseph Hayes, Percy Hayes, Destiney Jones, Adante Jordan, Mary Kachelski, Sean Kafer, Joey Koepp, Alex Larson, Sonora Larson, Holly Lavora, Lazarito Matheu, Vaun Mayes, Molly Nilssen, Shawn Page, Carmen Palmer, Chasidy Palmer, Dylan Palmer, Leah Porter, Aidali Rivera, William Rivera, Hector Rodriguez, Jose Hernandez Ramirez, Oscar Concepcion, Rodriguez, Rosalind Rogers, Nathan Sabel, William Schroeder, Madeliene Schweitzer, Mariah Smith, Peter Sparks, Tiffany Stark, Angel Vega, Christina Vitolo-Haddad, Gabriella Vitucci, Oscar Walton, Jayden Welch, Britta Welch, Suzanne Wells, Brandon Wilborn, Trisha Wilson, Katelyn Wojnar, Sonja Worthy
- b. Time Frame: 5/25/20-12/31/20
- c. Email addresses: bweber@wauwatosanet.net, jfarina@wauwatosanet.net, and lvetter@wauwtosa.net
- d. **Number of responsive Emails: Approximately 220**

#### SEARCH NO. 10

- a. Search Terms: Tahudah Cole, Tristiana Walls, Andrew Aaron, Kamila Ahmed, Robert Agnew, Isiah Baldwin, Lavita Booker, Rebecca Burrell, Raine Cich, Steven Conklin, Lauryn Cross, Rachel Dulay, Anne Delessio- Parson, Erik Fanning, Jessica Fenner, Jill Ferguson, Breon Foster, Joanna Geisler, Christine Groppi, Joseph Hayes, Percy Hayes, Destiney Jones, Adante Jordan, Mary Kachelski, Sean Kafer, Joey Koepp, Alex Larson, Sonora Larson, Holly Lavora, Lazarito Matheu, Vaun Mayes, Molly Nilssen, Shawn Page, Carmen Palmer, Chasidy Palmer, Dylan Palmer, Leah Porter, Aidali Rivera, William Rivera, Hector Rodriguez, Jose Hernandez Ramirez, Oscar Concepcion Rodriguez, Rosalind Rogers, Nathan Sabel, William Schroeder, Madeliene Schweitzer, Mariah Smith, Peter Sparks, Tiffany Stark, Angel Vega, Christina Vitolo-Haddad, Gabriella Vitucci, Oscar Walton, Jayden Welch, Britta Welch, Suzanne Wells, Brandon Wilborn, Trisha Wilson, Katelyn Wojnar, Sonja Worthy, Tracy Cole, Taleavia Cole, John Larry, Jacqueline Bogenberger, Gaige Grosskreutz, Khalil Coleman
- b. Time Frame: 5/25/20-12/15/20
- c. Email addresses: tcourt@wauwatosanet.net, rbloczynski@wauwatosanet.net, erondeau@wauwatosanet.net
- d. **Number of responsive Emails: Approximately 115**

As a starting point, defendants will produce Search Nos. 1, 6, 8, 9, and 10 without further limitation. Search Nos. 2, 3, 4, and 5 (Search Terms: Alvin Cole, BLM, George Floyd, Jacob Blake, Kimberly Motley and Deja Vishny—805 email results) were objected to as not relevant to any party's claim or defense and unduly burdensome; however, defendants were willing to

compromise on these searches if it would resolve the discovery dispute and would not be unduly burdensome.

During the second meet and confer on November 17, 2021, the parties agreed to change Search No. 7 from a city-wide search to thirty-one specific email addresses:

#### **UPDATED SEARCH NO. 7**

- a. Search Terms: “curfew”, “emergency declaration”, “emergency order”, “state of emergency”, “proclamation of emergency”, “TPR”, “The People’s Revolution”
- b. Time Frame: 5/25/20-10/13/20
- c. Email addresses: ~~City Wide~~ Barry Weber, Dennis McBride, Dominick Ratkowski, Luke Vetter, Jeffrey Farina, Joseph Roy, Joseph Lewandowski, Martin Keck, Shane Wrucke, Kathy Causier, Heather Kuehl, James Moldenhauer, Matt Stippich, John Dubinski, Tim Hanson, Nancy Welch, Ernst Franzen, Michael Walsh, Joel Tilleson, Meagan O’Reilly, Allison Byrne, Mike Morgan, Jason Kofroth, Jason Wilke, Craig Wilson, James Archambo, Joseph Mensah, tcourt@wauwatosa.net, rbloczynski@wauwatosa.net, erondeau@wauwatosa.net, C\_PoliceFire@wauwatosa.net

All thirty-one of the emails were included in the original city-wide email search for identical search terms and produced to plaintiffs. To eliminate duplicative production and make the request less burdensome, defendants proposed running Search No. 7 to eliminate overlap between the searches using time frames not part of the earlier search as outlined below:

#### **PROPOSED UPDATE TO SEARCH NO. 7 (WITH EXPLANATION)**

The prior email search referenced as ID 13764 was a city-wide email search—which included all the above email addresses. The exact search terms used, and date ranges were as follows:

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Email Keyword Expression matches 'body:("curfew" OR "emergency declaration"
                                OR "emergency order" OR "state of emergency" OR
                                "proclamation of emergency")' AND
                                Email Date on or after '2020-07-01 00:00:00 -0500' AND
                                Email Date on or before '2020-12-31 00:00:00 -0600')
OR
(   Email Keyword Expression matches 'body:("The People's Revolution"
OR "People's Revolution"
    OR "TPR" OR "Protest" OR "Protesting" OR "Police Presence
in the City of Wauwatosa"
    OR "Police Presence in the City of Wauwatosa")' AND
    Email Date on or after '2020-08-13 00:00:00 -0500' AND
    Email Date on or before '2020-10-14 00:00:00 -0500'
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As you can see some of the search terms started 7/1/20 and the others started 8/12/20. To avoid producing documents already part of the prior city-wide search I propose we do the additional timeframe-email specific searches-as follows to eliminate duplicate production of emails by simply eliminating the overlap in the date range of the searches:

- a. Search Terms: "curfew", "emergency declaration", "emergency order", "state of emergency", "proclamation of emergency"
- b. Time Frame: 5/25/20-6/30/21
- c. Email addresses: Barry Weber, Dennis McBride, Dominick Ratkowski, Luke Vetter, Jeffrey Farina, Joseph Roy, Joseph Lewandowski, Martin Keck, Shane Wrucke, Kathy Causier, Heather Kuehl, James Moldenhauer, Matt Stippich, John Dubinski, Tim Hanson, Nancy Welch, Ernst Franzen, Michael Walsh, Joel Tilleson, Meagan O'Reilly, Allison Byrne, Mike Morgan, Jason Kofroth, Jason Wilke, Craig Wilson, James Archambo, Joseph Mensah, tcourt@wauwatosanet.net, rbloczynski@wauwatosanet.net, erondeau@wauwatosanet.net, C\_PoliceFire@wauwatosanet.net

And ...

- a. Search Terms: "The People's Revolution", "People's Revolution", and "TPR"
  - b. Time Frame: 5/25/20-8/12/20
  - c. Email addresses: Barry Weber, Dennis McBride, Dominick Ratkowski, Luke Vetter, Jeffrey Farina, Joseph Roy, Joseph Lewandowski, Martin Keck, Shane Wrucke, Kathy Causier, Heather Kuehl, James Moldenhauer, Matt Stippich, John Dubinski, Tim Hanson, Nancy Welch, Ernst Franzen, Michael Walsh, Joel Tilleson, Meagan O'Reilly, Allison Byrne, Mike Morgan, Jason Kofroth, Jason Wilke, Craig Wilson, James Archambo, Joseph Mensah, tcourt@wauwatosanet.net, rbloczynski@wauwatosanet.net, erondeau@wauwatosanet.net, C\_PoliceFire@wauwatosanet.net
- This should give you the earlier timeframe as requested but eliminate all the duplicate emails (already produced) and help to reduce the estimated 6100 emails responsive.

The proposal and updated search parameters for Search No. 7 were emailed to plaintiffs on November 17, 2021. Defendants asked plaintiffs to verify the search parameters were accurate, complete, and respond to the proposed change as soon as possible to allow updated numbers to be requested and discussed.

Hearing nothing from counsel for plaintiffs, a follow-up email was sent the morning of November 19, 2021. Late in the evening, Attorney Motley vaguely responded, "thank you for your email and as you are aware in the meet and confer that we just had that was clarified so you should have plenty to rely to your clients." Attorney Motley then asked that we provide a date certain for production of all discovery. This response illustrates the broader concern of defendants in this case. The discovery dispute over email searches has not been resolved and rather than continuing to work towards resolution plaintiffs simply respond demanding a date certain for the discovery production.

Counsel for defendants have made a good faith effort to resolve the disputes regarding the email search terms and timeframes. Despite these attempts, running the searches would require defendants to review and produce an additional 8,359<sup>1</sup> emails. To put this in perspective, defendants have already produced approximately 15,692 pages of emails, 854 pages of additional documents, and over 100 videos.

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<sup>1</sup> This number could be slightly lower. Defendants do not yet have the final numbers for the Amended Search No. 7.

While we have been willing to compromise on providing smaller irrelevant searches to resolve disputes, it is unreasonable and unduly burdensome to ask defendants to search, review, and produce emails that have already been provided. For this reason, defendants are seeking instruction from the Court.

First, regarding Search No. 7. Defendants ask that this Court resolve the discovery dispute by ordering the “PROPOSED UPDATE TO SEARCH NO. 7” parameters instead of “UPDATED SEARCH NO. 7” parameters.

Second, Defendants ask the Court to order that Search Nos. 2, 3, 4, and 5 are not relevant to any party's claim or defense and would be unduly burdensome.

Defendants acknowledge this Court instructed them to provide a date certain for producing discovery. As discussed with plaintiffs during the meet and confers, defendants understood the instruction to be appropriate if the parties could resolve the discovery objections. Because the parties have been unable to fully agree, defendants are in a difficult position trying to estimate a date certain without knowing how the Court will handle the objections. Plaintiffs have taken the position that a date certain is required with or without agreement. As such, defendants simply wish to make the Court aware that pending resolution of the discovery disputes the date certain may well be earlier but to accommodate the searches without further limitation defendants offer January 7, 2021, as the date certain.

It is also important to note, the parties discussed and agreed to mark the native data email sheets which contain sensitive data security information “For Attorney’s Eyes Only.” Defendants then drafted a stipulation and proposed order to which plaintiffs asserted the recorded conversation and email was sufficient and refused to execute the stipulation.

Respectfully submitted,

*/s/ Kiley B. Zellner*

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